

**John Chaney Trucking, Inc. and Watts & Chaney  
Trucking Company, Inc. and United Mine  
Workers of America. Case 9-CA-32863**

September 15, 1995

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS COHEN  
AND TRUESDALE

Pursuant to a charge and an amended charge filed by the Union on April 28 and June 14, 1995, respectively, the General Counsel of the National Labor Relations Board issued a complaint on July 3, 1995, alleging that Respondents John Chaney Trucking, Inc. and Watts & Chaney Trucking Company, Inc. have violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 9-RC-16427.<sup>1</sup> (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondents filed an answer admitting in part and denying in part the allegations in the complaint.

On August 21, 1995, the General Counsel filed a Motion for Summary Judgment and memorandum in support. On August 23, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In their answer the Respondents admit their refusal to bargain, but attack the validity of the certification on the basis of their objections to the election in the representation proceeding.

All representation issues raised by the Respondents were or could have been litigated in the prior representation proceeding. The Respondents do not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor do they allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondents have not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

<sup>1</sup> Although Respondent Watts & Chaney Trucking Company, Inc. was identified as "Watts & Chaney Company, Inc." in the representation proceeding, the Respondents' answer to the complaint asserts that the correct name of the Respondent is "Watts & Chaney Trucking Company, Inc."

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondents have been employers engaged in the business of hauling coal in the Hazard, Kentucky area and have voluntarily responded collectively to the Union's demands for recognition and collectively participated in the representation proceeding in Case 9-RC-16427. During the 12 months preceding issuance of the complaint, the Respondents collectively, in conducting their operations, purchased and received at their Kentucky operations diesel fuel valued in excess of \$50,000 from another enterprise located within the Commonwealth of Kentucky that is engaged in interstate commerce, and derived gross revenues in excess of \$50,000 for the transportation of coal within the Commonwealth of Kentucky as an essential link in the interstate transportation of coal to points outside the Commonwealth of Kentucky. The Respondents admit and we find that the Respondents are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held September 20, 1994, the Union was certified on February 24, 1995, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time truck drivers employed by the Employers at their Starfire job-site located near Hazard, Kentucky, excluding the maintenance employees, all clerical employees and all professional employees, guards and supervisors as defined by the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

**B. Refusals to Bargain**

About March 30 and June 13, 1995, respectively, the Union requested Respondent Chaney and Respondent Watts to bargain and, since the same dates, the Respondents have refused. We find that these refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

**CONCLUSION OF LAW**

By refusing on and after March 30 and June 13, 1995, respectively, to bargain with the Union as the

exclusive collective-bargaining representative of employees in the appropriate unit, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondents have violated Section 8(a)(5) and (1) of the Act, we shall order them to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondents begin to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondents, John Chaney Trucking, Inc. and Watts & Chaney Trucking Company, Inc., Hazard, Kentucky, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Mine Workers of America as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time truck drivers employed by the Employers at their Starfire jobsite located near Hazard, Kentucky, excluding the maintenance employees, all clerical employees and all professional employees, guards and supervisors as defined by the Act.

(b) Post at their jobsite in Hazard, Kentucky, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 9 after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Mine Workers of America as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time truck drivers employed by us at our Starfire jobsite located near Hazard, Kentucky, excluding the maintenance employees, all clerical employees and all professional employees, guards and supervisors as defined by the Act.

JOHN CHANEY TRUCKING, INC. AND  
WATTS & CHANEY TRUCKING COM-  
PANY, INC.